



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35616]

Central Midland Railway Company and Progressive Rail Inc.—Intra-Corporate Family Transaction Exemption

Central Midland Railway Company (CMR) and Progressive Rail Inc. (PGR), both Class III rail carriers, have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) and 1180.2(d)(6) for an intra-corporate family transaction and for reincorporation in a different State, pursuant to which PGR will remain in control of CMR after CMR reincorporates from an Indiana corporation to a Minnesota corporation.

According to applicants, CMR leases and operates certain rail lines within the State of Missouri, but it is incorporated in the State of Indiana. Applicants state that CMR, which currently is in administrative dissolution, seeks to become a Minnesota corporation in lieu of continuing as an Indiana corporation, and that PGR wishes to remain in control of CMR after CMR's reincorporation in Minnesota. PGR, which operates certain rail lines within the States of Minnesota and Wisconsin, acquired control of CMR in 2007.¹ PGR also controls Airlake Terminal Railway Company, LLC, a Class III rail carrier that operates within the State of Minnesota.² In addition, PGR has obtained an exemption to continue in control of Montgomery Short Line LLC (MSL)

¹ See Progressive Rail Inc.—Acquis. of Control Exemption—Cent. Midland Ry., FD 35051 (STB served July 5, 2007).

² See Progressive Rail Inc.—Intra-Corporate Family Transaction Exemption—Airlake Terminal Ry., FD 35168 (STB served Nov. 28, 2008).

upon MSL's becoming a Class III rail carrier. MSL is a wholly owned subsidiary of PGR.³

Applicants state that all the assets and liabilities of the Indiana corporation, known as Central Midland Railway Company, will be transferred to a Minnesota corporation of the same name. Once the transaction is completed, that corporation will be a wholly owned subsidiary of PGR.

Applicants anticipate consummating the proposed transaction on or after May 18, 2012, the effective date of the exemption (30 days after the exemption was filed).

The transaction will allow CMR to reincorporate in Minnesota, and allow PGR to remain in control of CMR. In addition, the transaction will facilitate CMR's return to good corporate standing and the efficient administration of these railroads, as the headquarters for both railroads is in Minnesota.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). Applicants state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family. And the reincorporation of CMR is the type of transaction specifically exempted from prior review and approval under 49 CFR 1180.2(d)(6).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under

³ See Progressive Rail Inc.—Continuance in Control Exemption—Montgomery Short Line LLC, FD 35092, (STB served Nov. 9, 2007).

11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 11, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35616, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition one copy of each pleading must be served on Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

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Decided: April 30, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig

Clearance Clerk